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In the High Court of Judicature at Madras

Dated:14.02.2006

Coram:

The Hon'ble Mr. Justice P. SATHASIVAM
and
The Hon'ble Mr. Justice J.A.K. SAMPATHKUMAR

Habeas Corpus Petition No.19 of 2006

Parvathi .. Petitioner

vs.

1. The District Collector &
   District Magistrate
   Tiruvallur District, Tiruvallur.

2. State of Tamil Nadu,
   rep. by its Secretary,
   Food and Consumer Protection
   Department, Fort St.George,
   Chennai 9.

3. Union of India rep. by
   Secretary to Government
   Food and Consumer Protection
   Department, New Delhi. .. Respondents

Petition filed under Article 226 of the Constitution of India praying for the issuance of writ of Habeas Corpus as stated therein.

For petitioner : Mr. B. Kumar, Sr. Counsel
for Mr. C. Prakasam
For respondents 1 & 2 : Mr. Abudukumar Rajarathinam
Govt., Advocate (Crl.side)

ORDER

(Order of the Court was made by P. SATHASIVAM,J.)

The petitioner is the mother of one Mani @ Deivasigamani, who was detained as a Black Marketer by the District

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Magistrate and District Collector, Tiruvallur District, under Section 3(2)(a) read with Section 3(1) of the Prevention of Black-marketing and Maintenance of Supplies of Essential Commodities Act, 1980 (in short "the Act"), after finding that the detenu Mani @ Deivasigamani was indulging in activities prejudicial to the maintenance of supply of commodities essential to the community.

2. The brief facts of the case are stated hereunder:

(a) The Tahsildar, Thirutani received a telephonic information from the Revenue Divisional Officer, Thirutani Division that huge quantity of rice meant for distribution to the poor public under Public Distribution System (PDS) were being unloaded from a lorry bearing registration No.TCB 6553 at Saravana Modern Rice Mill at Thirutani with a direction to take action. Pursuant to the said information, lorry bearing registration number TCB 6553 was intercepted at Saravana Modern Rice Mill at Thirutani. From the lorry, 372 bags of PDS rice, each bag weighing 50 kgs. were seized and the Inspector of Police, Civil Supplies CID, Chennai Unit took up investigation and registered a case in Crime No.502 of 2005.

(b) On 01.12.2005, District Supply Officer (DSO), Tiruvallur, gave a written complaint to the Inspector of Police, Civil Supplies CID, Chennai, stating that while on 29.11.2005, the Revenue Divisional Officer, Thirutani and party conducted a raid at the premises of Saravana Modern Rice Mill, they found a lorry bearing registration No.TN 20K 7228 containing 253 bags of polished raw rice loaded and in the premises they found 145 bags of boiled rice, 91 bags of raw rice and 27 bags of dhore dall, which were meant for PDS, and seized them along with the lorry and samples were sent for analysis. The Inspector of Police, Civil Supplies CID, Chennai, registered a case in Crime No.663 of 2005 under Section 6(4) of TNSC (RDCS) Order 1982 r/w 7(1)(a)(ii) of the Essential Commodities Act, 1955. The detenu Mani @ Deivasigamani was arrested on 01.12.2005 at 22.00 hrs. and remanded by Judicial Magistrate, Thirutani till 16.12.2005. Confession statement was recorded from the detenu, in which he has stated that with the help of a broker he procured and hoarded the PDS rice and he wanted to sell the same at higher price in black-market.

(c) Further, the DSO in her complaint has stated that the consignments started from FCI godown, Avadi on 28.11.2005, and on 29.11.2005, the rice was polished at Saravana Modern Rice Mill, on which date, the RDO intercepted and seized the commodities. The DSO conducted enquiry, which revealed that the consignments were allotted to 31 ration shops. All the ration shops were made surprise check on 02.12.2005 by the joint team lead by Vigilance Officer R. Vijayakumar, which revealed that there were shortage of raw rice at huge quantity and excess of boiled rice in those shops.

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A statement was also recorded from one Ambika. Based on the above materials, the impugned detention order was issued by the first respondent to prevent the detenu from indulging in such acts which are prejudicial to the maintenance of supply of commodities essential to the community.

3. Heard Mr. B. Kumar, learned senior counsel for the petitioner and Mr. Abudukumar Rajarathinam, learned Government Advocate (Crl.side) for the respondents.

4. At the foremost,Mr. B. Kumar, learned senior counsel appearing for the petitioner submitted that the detention order was passed on 07.12.2005, on 08.12.2005 grounds were supplied, and on 14.12.2005 the Detaining Authority / District Magistrate sent a letter to the detenu, enclosing a special report of the Inspector of Police, Civil Supplies CID, Chennai stating that the same was omitted to be supplied to the detenu. The said communication was received by the detenu on 15.12.2005. According to him, under Section 8 of the Act, grounds have to be communicated to the detenu within 5 days and for exceptional reasons recorded in writing it can be served within 10 days and inasmuch as the special report is a relied upon document, there are exceptional reasons available for the delay in communicating the relied upon document as well as the reasons given for not supplying the document do not come within the exceptional reasons, the detention order is violative of Article 22 (5) of the Constitution of India.

5. It is not in dispute that the Special report which was omitted to be supplied along with grounds that were supplied on 08.12.2005 to the detenu is a relied upon document. Section 8(1) of the Act reads as under.

> "8. Grounds of order of detention to be disclosed to person affected by order.
> (1) When a person is detained in pursuance of a detention order, the authority making the order shall, as soon as may be, but ordinarily not later than five days and in exceptional circumstances and for reasons to be recorded in writing, not later than ten days from the date of detention, communicate to him the grounds on which the order has been made and shall afford him the earliest opportunity of making a representation against the order to the appropriate government. "

It is clear from the above provision that if a person is detained, the detaining authority is expected to disclose the grounds of order of detention within a period not later than 5 days and only in

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exceptional circumstances, that too for the reasons recorded in writing, it is open to the detaining authority to communicate the grounds on which the order has been made within a period not later than 10 days from the date of detention. The safeguards, particularly the period is to enable the detenu to make a representation against the order of detention before the appropriate Government at the earliest point of time.

6. The learned Government Advocate has produced a letter of the District Magistrate dated 14.12.2005, which was acknowledged by the detenu on 15.12.2005. The said letter reads as under:-

" ந.க.38797/2005/எஸ்3. நாள் 14.12.2005

தங்கள் மீது தடுப்பு காவல் ஆணை 38797/கள்ளச்சந்தை/2005 நாள் 07.12.2005 தேதியில் பிறப்பிக்கப்பட்டது. தடுப்புக் காவல் ஆணை தங்களுக்கு 08.12.2005 தேதியிலும் ஆவணங்கள், உரிய தடுப்புக் காவல் ஆணைக்கான காரணங்களுடன் 12.12.2005 தேதியில் வழங்கப்பட்டது. வழங்கப்பட்ட ஆவணங்களுடன் ஆய்வாளரின் தனி அறிக்கை தைத்த நிலையில் விடுபட்டுவிட்டது. அதன் நகல் இத்துடன் இணைக்கப்பட்டுள்ளது.

மாவட்ட ஆட்சியர்,
திருவள்ளூர். "

It is seen from the above communication that the special report had not been supplied along with the grounds of detention by mistake on the part of the subordinate officials by not stitching the same with all the papers.

7. The learned senior counsel by drawing our attention to Sections 3 (3) and 8 (1) of the Act contended that the reason given is not a "exceptional circumstance" as stated in sub-section (1) of Section 8 of the Act and in any event inasmuch as the Government approved the order of detention only on 16.12.2005 and the special report was served on the detenu on 15.12.2005, in the absence of any reference in the order of approval by the Government, the detention order is liable to be quashed. He also relied on the decisions of the Apex Court in the cases of (i) Ibrahim Ahmad Batti vs. State of Gujarat (AIR 1982 SC 1500) and Hem Lall Bhandari vs. State of Sikkim (AIR 1987 SC 762).

8. The first case, i.e., AIR 1982 SC 1500 (cited supra) relates to detention under COFEPOSA Act. It was contended before the Supreme Court that the grounds together with all the documents and statements incorporated in the grounds are required to be

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communicated to the detenu in the language he understands, ordinarily within 5 days of his detention and only in exceptional circumstances and for reasons to be recorded in writing within 15 days from the date of his detention under Section 3 (3) of the COFEPOSA Act, and in other words, the delay beyond 5 days is justifiable only in exceptional circumstances and for reasons to be recorded in writing, but in the instant case Urdu translation of the bulk of documents and statements incorporated in the grounds and relied upon by the detaining authority in reaching the requisite subjective satisfaction were not supplied to the detenu within the normal period of 5 days but the supply thereof was delayed upto 13 days without any exceptional circumstances and without recording any reason. The learned counsel further urged that the petitioner was deprived of an opportunity to make effective representation to satisfy the Advisory Board that no exceptional circumstances existed and that the delay in supply of Urdu translation that were given to him was neither reasonable nor justified.

9. On the other hand, it was contended on behalf of State that since it was Ramjan period, number of Urdu translators were not available and because of the same they were not in a position to translate bulk of documents in Urdu language to be supplied to the detenu, which necessitated the delay. The question before the Supreme Court was, whether such delay was justified by existence of any exceptional circumstance as required in Section 3(3) of COFEPOSA Act? After examining the reasons stated, viz., on account of holy month of Ramjan Urdu translators were not available and even the limited persons available were prepared to work only from 12 noon to 4.00 p.m. because of Ramzan fasting they observed, the Supreme Court rejected the same and observed,

> "11. ..... It is difficult to swallow the proposition that the State Government (which is detaining authority here) with all its power and resources could not find requisite number of qualified persons to do that job so as to make Urdu translations of the concerned documents and statements available to the detenu within the normal period of five days. With the previous detention order having been vitiated on the very ground greater vigilance and expedition was expected from the detaining authority. In all the facts and circumstances it is impossible to hold that exceptional circumstances obtained in the case justifying the delay and as such the same constitutes a breach of the constitutional as well as the legislative mandate. "

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10. Though learned senior counsel for the petitioner heavily relied on the above observation and contended that the reason given in our case for sending the special report, a relied upon document only on 14.12.2005, which is beyond 5 days, is not an exceptional circumstance as per Sub-section (1) of Section 8 of the Act, the factual details available in the Supreme Court case are distinguishable for the following reasons. As rightly pointed out by the learned Government Advocate, in the case before the Supreme Court, the detaining authority was very well aware that the detenu knows only Urdu language and all documents and materials supporting the grounds of detention are to be translated in Urdu. Further, for the very same reason, the previous detention imposed on the detenu had been set aside. In such a circumstance, after finding that greater vigilance and expedition were expected from the detaining authority, the reason given is not a justifiable one and an exceptional circumstance, which constitutes the breach of constitutional as well as legislative mandate. Such is not the position in our case. It is not in dispute that except the special report, all other documents and materials in support of the grounds of detention were supplied to the detenu within the prescribed time. In such circumstances, we are of the view that considering the materials and factual details, the said decision is not helpful to the case on hand, as in the relied on case, Supreme Court quashed the detention order on the ground that it was the second detention order, in which the detaining authority should have been more careful and responsible.

11. The second decision relied on is Hem Lall Bhandari vs. State of Sikkim (AIR 1987 S.C. 762), which arose under the National Security Act (in short "the N.S. Act"). In that case, on 14.10.1986, the petitioner was served with the order of detention, the grounds of detention and the supporting documents. The Supreme Court held that the delay caused in serving the grounds of detention from 02.10.1986 to 14.10.1986, clearly violates Section 8(1) of N.S. Act. As a bare reading of Section 8(1) of N.S. Act shows that it is obligatory on the detaining officer to communicate to the detenu, the grounds on which the order of detention has been made promptly and this has to be done as soon as possible and ordinarily not later than 5 days and the detaining authority is permitted to exceed this period of 5 days in exceptional circumstances. The Supreme Court also held that the grounds of detention under exceptional circumstances can be communicated to the detenu within a period not later than 15 days from the date of detention but when the detaining authority takes time more than 5 days, he has to record reasons as to why the grounds of detention could not be communicated within 5 days. Their Lordships have further held that, even if the reasons are recorded, they have to inspire confidence of the Court and are subject to legal scrutiny. According to their Lordships, if the

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reasons were unsatisfactory, the Court has to quash the order of detention. In that case, as rightly pointed out by the learned Government Advocate, the grounds of detention were communicated to the petitioner after 10 days and absolutely there was no recorded reason for the long delay. In such circumstances, in the absence of any material record for long delay, the Supreme Court arrived at a conclusion that the order of detention is bad and ultimately quashed the same. As stated earlier, such is not the position in our case. Except the special report, all other documents, grounds of detention, etc., were supplied to the detenu within the prescribed period. We are of the view that inasmuch as the Supreme Court has quashed the order of detention only on the ground that there was no acceptable or satisfactory explanation from the Officer for the delay, the same is not applicable to the case on hand.

12. In the case on hand, as stated earlier, the only document that was not sent within 5 days is a special report. By letter dated 14.12.2005, the District Magistrate / Collector, Tiruvellore sent copy of the special report to the detenu through the Superintendent, Central Prison, Chennai, wherein it is stated that the said document was left out while stitching the documents by subordinate officers of the Department. The same was acknowledged by the detenu on 15.12.2005. Though it is contended that the reason in the letter dated 14.12.2005 is not an exceptional circumstances, considering the fact that the only document left out is the special report and all other materials, including the grounds of detention were supplied to the detenu within 5 days from the date of detention, i.e., within the prescribed period, we are of the view that there is no reason to reject the explanation of the District Magistrate. Accordingly, the contention raised by the learned senior counsel for the petitioner is liable to be rejected.

13. In addition to the above main point, the learned senior counsel pointed out that the said lapse ought to have been brought to the notice of the Government, the approving authority. For the same reason stated above, we are unable to accept the said contention. Further, the said document was served to the detenu on 15.12.2005 and the order of detention was approved by the Government on 16.12.2005.

14. Though learned senior counsel has pointed out that the detenu had studied only upto IX standard and does not know English to read and write, and the relied upon document, viz., Inspection Report at pages 62 to 67 is only in English and no translated copy was supplied, on verification of those pages, we are satisfied that the relevant materials were translated in Tamil and supplied to the detenu. We are also satisfied that there is no lapse on the part of the detaining authority.

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15. The learned senior counsel for the petitioner by pointing out paragraph 3 of the grounds of detention contended that though so many details have been relied upon regarding the investigation done by DSO, copies of the same were not communicated to the detenu. We verified para 3 of the grounds of detention and the documents supplied to the detenu. As rightly pointed out by the learned Government Advocate, we are satisfied that all the required documents, First Information Report, confession statement, statements by others have been communicated to the detenu, and hence, this contention is liable to be rejected.

16. Though a faint argument was advanced to the effect that the lorry bearing registration No.7288 was belonging to Nitjhyanandan and not the detenu, the same cannot be agitated and gone into by this Court while considering the validity of the detention order. Likewise, the stand of the petitioner that the detenu had already leased out the Saravana Modern Rice Mill and given possession to one Vedachalam and others, and the detenu cannot be made responsible for what happened thereafter, is also beyond the scope of this petition. It is for the petitioner or detenu to raise these objections before the appropriate authority / forum.

Under these circumstances, we do not find any valid grounds for interference; accordingly, the habeas corpus petition fails and the same is dismissed.

kh

Sd/
Asst.Registrar

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Sub Asst.Registrar

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To

1. The District Collector &
   District Magistrate
   Tiruvallur District
   Tiruvallur.

2. The Secretary,
   State of Tamil Nadu
   Food and Consumer Protection
   Department, Fort St.George,
   Chennai 9.

3. The Secretary to Government
   Union of India
   Food and Consumer Protection
   Department, New Delhi.

4. The Public Prosecutor
   High Court, Madras.

5. The Superintendent,
   Central Prison,
   Chennai.

6. The Joint Secretary to Govt.,
   of Tamilnadu,
   Public (Law & Order) Dept.,
   Fort St.George, Chennai-9.

+1 CC to Mr.C.Prakasam, Advocate, SR No.6650

JRG(CO)
BG/17.2.2006

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